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IN THE SUPREME COURT OF THE UNITED STATES

WASHINGTON, D.C.

NO. 191
October Term, 1969

FRANK and LUCILLE RISTUCCIA
Appellants

vs

EARL and BERNICE ADAMS, et al
Appellees

APPEAL FROM U.S. COURT OF APPEALS
FOR THE NINTH CIRCUIT
HON. STANLEY BARNES, JUDGE
HON. WALTER ELY, JUDGE
HON. SHIRLEY HUFSTEDLER, JUDGE

APPELLANTS'
"PETITION FOR REHEARING"

FRANK RISTUCCIA
LUCILLE RISTUCCIA
1216 N. La Brea Avenue
Hollywood, Calif. 90038

Appellants in propria personae

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I

The appellants' FRANK and LUCILLE RISTUCCIA petition the above entitled court for a "Rehearing" from a decision entered on Oct. 13, 1969 by this court which dismissed and denied the appellants' appeal without a hearing, for "want of jurisdiction.

This "Petition for Rehearing" is based upon the provisions of Rule 58 of the U.S. Supreme Court Rules, Article III and Amendments 1, 5, 8, 14 of the U.S. Const. and sections 1253, 1254, 2101 and 2107 of 28 USC.

GROUNDS FOR PETITION

The grounds for this "Petition for Rehearing" are as follows:

1. This court exceeded its authority and rendered a void decision in violation of the U.S. Const. and laws of the U.S. when it dismissed and denied the appellants' appeal on October 13, 1969 for "want of jurisdiction" without a hearing when the face of the true and correct record of this case and pertaining law conclusively prove that the appellants' appeal is proper, timely and is within the jurisdiction of this court.

> A judgment is void if it is beyond the powers granted to the court by the law.
> Grey v Clement 296 Mo 497

2. The appellants are entitled under the

U.S. Const. and laws of the U.S. to an appeal to this court based upon the evidence on the face of the true and correct record of this case and the laws of the U.S. which conclusively prove that the appellants' appeal to this court is proper and timely and is within the jurisdiction and authority of this court in the following particulars;

a. The appellants were denied a fair trial, due process and equal protection in violation of the U.S. Const. when the Calif. Superior Crt, on Sept 12 and 24, 1963, unlawfully awarded them, without a trial on the merits, inadequate costs and damages obtained thru fraud and lack of jurisdiction.

b. The appellants were denied due process in violation of the U.S. Const. when the Cal. Superior Crt on Oct 2, 1964 denied the appellants' proper and timely "Motion to Open Judgment to Modify Costs and Damages" under sec. 473 of the Calif. Code of Civ.

proc. based on the ground that the judgment of costs and damages was void for lack of juris and fraud. Although the appellants filed their "Motion" approximately a year after entry of judgment by the Calif. Superior Crt, it is well established that they were entitled to do so under state and federal law when the relief sought was from a void judgment due to lack of jurisdiction or fraud, as in this case.

Such a judgment cannot sustain a record, cannot be the basis of any right under the law and upon application by an injured party, must be corrected or modified to conform with the law, and such application can be made long after the usual time limits have expired.

A motion at any time may be made under CCP 473 when judgment is void on its face. King v Superior Crt San Diego ✓
56 P 2d 268

Relief from a judgment on ground of fraud in its procurement is not subject to any limitation of time.
Bowman Vs Bowman 148 CA 602

c. the appellants were denied due process in violation of the U.S. Const. when The Calif. District Crt of Appeal on Jan 26, 1967 denied the appellants proper and timely appeal without correct and sufficient findings of fact and conclusions of law and the appellants were subjected to cruel and unusual punishment in violation of the U.S. Const. when the Calif. District Crt of Appeal imposed upon them a penalty of $200 for exercizing their guaranteed right of appeal to that court.

> The right of petition is guaranteed by the Const. free from all penalty for having sought it. Louisiana Cit. Bnk vs Orl Par Bd of Ass 54 Fed 73

d. The appellant were denied due process in violation of the U.S. Const. when the Calif. Supreme Court on Mar. 22, 1967 denied their proper and timely appeal without a hearing, without keeping a docket and without issuing a remittitur.

e. The appellants were denied due

process in violation of the U.S. Const. when the U.S. District Court on Apr. 28, 1967 dismissed, denied and remanded the appellants proper and timely "Petition for Removal" without a hearing and without correct or sufficient findings of fact or conclusions of law.

f. The appellants were denied due process in violation of the U.S. Const. when the U.S. Crt of Appeals on Feb. 12, 1969 denied the appellants proper and timely "Appeal" and "Complaint for Declaratory Relief and Inj." without correct or sufficient findings of fact or conclusions of law and the appellants were denied due process when the U.S. Crt of Appeals prepared and transmitted to this court an incomplete, inadequate, untrue and incorrect "Transcript of Record" which failed to include most of the documents requested by the appellants in their "Notice of Appeal to the U.S. Supreme Court" filed on March 14, 1969.

3. This court is under a mandatory duty under the U.S. Const. Article III and Amend. 1, 5, 14 to accept the appellants' appeal, to allow a fair hearing and to grant the relief required by law because the appeal is proper, is timely and is a case where there has been a denial of rights under the U.S. Const.

> The U.S. Supreme Court has jurisdiction of all cases legally brought before it where there has been a denial of rights under the U.S. Const.
> Article III of the U.S. Const.

> The U.S. Supreme Crt may affirm, modify, vacate, set aside or reverse any judgment, decree or order of a court lawfully brought before it.
> 28 U.S.C. section 2106.

> All crts of the U.S. receive their powers from the government, the constitution and laws of the U.S. and are bound by the limitations and requirements of such laws and cannot assume to act or refuse to act against the authority from which they receive their power.
> Harrington v Sup Crt 194 C 185.

> The right of petition or appeal is guaranteed by the U.S. Const and cannot be denied or abridged.
> U.S. Const. Art. III, Amend 1, 5, 14
> 28 U.S.C sec. 1253, 1254, 2101, 2106, 2107

4. Unless this court corrects or modifies the void judgment of costs and damages of the Calif. Superior Court to make it conform with the law, the said judgment is null and void, cannot be the basis of any claim or right under the law, cannot sustain a record and cannot be final or res judicata because all the rights of the parties and the issues presented were not finaly and fairly adjudicated.

> A judgment void on its face is a nullity and all acts performed under it are void. Texas Co v Bd of Amer (1958) 50 C 2d 55

> Where a statute authorizes a prescribed procedure and the crt acts contrary to the authority conferred, it has exceeded its juris and the order so made is void. Parks v Shell Oil Co 1942 20CA 2d 49

> A judgment that is void may be attached anywhere it presents itself. It is a nullity and can be neither a basis for nor evidence of any right whatsoever. Ford v Hyde 31 C 2d

b. The decision of this court to dismiss

CERTIFICATE OF SERVICE BY MAIL

We, FRANK and LUCILLE RISTUCCIA, appellants in this action, certify under penalty of perjury that we mailed on November 6, 1969 a "PETITION FOR REHEARING" to CHARLES PRICE, attorney for EARL and BERNICE ADAMS, the appellees in this action, addressed to 6380 Wilshire Blvd., Suite 1415, Los Angeles, California.

Frank Ristuccia
FRANK RISTUCCIA

Lucille Ristuccia
LUCILLE RISTUCCIA
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90038

Appellants in
Propria Personna